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11 WILLIAM J. HOFFMAN, Receiver

12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 WILLIAM J. HOFFMAN, Court-
appointed permanent receiver for
17 Nationwide Automated Systems, Inc.,
Oasis Studio Rentals, LLC, Oasis Studio
18 Rentals #2, LLC, and Oasis Studio
Rentals #3, LLC, and their subsidiaries
19 and affiliates,

20 Plaintiff,

21 v.

22 KELLY, BRIANNA & AIDAN CORP.,
a Connecticut corporation; SEAN
23 SULLIVAN; SEAN F. SULLIVAN;
DEVIN SULLIVAN; MEGHAN
24 BOUSTANY; MOLLY ROBOTTI; and
Does 1 through 10, inclusive,

25 Defendants.
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27
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Case No. 2:17-cv-4183

COMPLAINT FOR FRAUDULENT
TRANSFER

1 Plaintiff William J. Hoffman of Trigild, Inc. ("Receiver"), the Court-
 2 appointed permanent receiver for Nationwide Automated Systems, Inc. ("NASI"),
 3 Oasis Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, Oasis Studio
 4 Rentals #3, LLC, and their subsidiaries and affiliates ("Receivership Entities"),
 5 hereby brings the following Complaint against the above-captioned Defendants,
 6 Kelly, Brianna & Aidan Corp., Sean Sullivan, Sean F. Sullivan, Devin Sullivan,
 7 Meghan Boustany, and Molly Robotti (collectively, "Defendants"), and alleges, on
 8 behalf of the Receivership Entities, as follows:

9 I. INTRODUCTION

10 1. The Receiver was appointed permanent receiver in the Securities and
 11 Exchange Commission ("Commission") enforcement action styled as *Securities and*
 12 *Exchange Commission v. National Automated Systems, Inc., et al.*, United States
 13 District Court, Central District of California, Case No. 14-CV-07249-SJO (FFMx)
 14 ("SEC Action"), pursuant to the Preliminary Injunction and Orders (1) Freezing
 15 Assets; (2) Prohibiting the Destruction of Documents; (3) Requiring Accountings;
 16 and (4) Appointing a Receiver entered in the SEC Action on October 29, 2014
 17 ("Preliminary Injunction").

18 2. Among other things, the Preliminary Injunction calls for the Receiver
 19 to recover and marshal, for the benefit of creditors of and investors in the
 20 Receivership Entities, any and all assets which were owned, leased, occupied, or
 21 otherwise controlled by the Receivership Entities or were otherwise purchased with
 22 assets of the Receivership Entities. The Receiver holds exclusive authority and
 23 control over the assets of the Receivership Entities, including over the causes of
 24 action alleged herein.

25 3. By this Complaint, the Receiver seeks to recover transfers of funds out
 26 of the Receivership Entities to Defendants that constitute "actually fraudulent" and
 27 "constructively fraudulent" voidable transfers under California's Uniform Voidable
 28 Transactions Act, Cal. Civ. Code section 3439, *et seq.*

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter on the basis of diversity of citizenship of the parties pursuant to 28 U.S.C. § 1332(a)(1), in that the Receiver, in his capacity as Court-appointed receiver for the Receivership Entities, is a citizen of the state of California, and Defendants are not citizens of the state of California, and in that the amount in controversy in this action exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. This Court may exercise personal jurisdiction over the above-captioned Defendants pursuant to Federal Rule of Civil Procedure 4(k), and 28 U.S.C. §§ 754 and 1692, because Defendants are the recipients of assets of the Receivership Entities, which assets are alleged, on information and belief, to be located in the state of Connecticut, and because the Receiver has previously complied with the terms of 28 U.S.C. § 754 by filing in the United States District Court for the District of Connecticut copies of the complaint and the order for his appointment filed and entered in the SEC Action.

6. Venue in the Central District of California is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim at issue occurred in the Central District of California, in that the contracts at issue facilitating the transfers of the Receivership Entity funds to Defendants were entered into in Calabasas, California; the purported business of the Receivership Entities which generated the funds paid to Defendants were operated from offices in Calabasas California; and the receipt and transfers of funds by and between the Receivership Entities and Defendants were facilitated through financial institutions located in or around Calabasas, California.

III. PARTIES

7. The Receiver is the duly appointed permanent receiver for the Receivership Entities, and was appointed permanent receiver for the Receivership Entities pursuant to the Preliminary Injunction.

1 8. On information and belief Kelly, Brianna & Aidan Corp. is a
2 Connecticut registered corporation that has its principal place of business in Darien,
3 Connecticut, and is the recipient of assets of the Receivership Entities as described
4 further herein.

5 9. On information and belief, Sean Sullivan is a citizen and resident of the
6 state of Connecticut, and is the recipient of assets of the Receivership Entities as
7 described further herein.

8 10. On information and belief, Sean F. Sullivan is a citizen and resident of
9 the state of Florida, and is the recipient of assets of the Receivership Entities as
10 described further herein.

11 11. On information and belief, Devin Sullivan is a citizen and resident of
12 the state of Maine, and is the recipient of assets of the Receivership Entities as
13 described further herein.

14 12. On information and belief, Meghan Boustany is a citizen and resident
15 of the state of Connecticut, and is the recipient of assets of the Receivership Entities
16 as described further herein.

17 13. On information and belief, Molly Robotti is a citizen and resident of the
18 state of Connecticut, and is the recipient of assets of the Receivership Entities as
19 described further herein.

20 14. The Receiver is ignorant of the true names and capacities, whether
21 individual, corporate, associate or otherwise, of Does 1 through 10. The Receiver is
22 informed and believes, and based thereon alleges, that each fictitiously named
23 defendant is the recipient of voidable transfers from the Receivership Entities, or
24 was in some way responsible for, participated in or contributed to the matters and
25 things of which the Receiver complains herein, and in some fashion, has legal
26 responsibility therefor. When the exact nature and identity of such fictitious
27 defendants' responsibility for, participation in and contribution to the matters and
28

1 things herein alleged is ascertained, the Receiver will seek to amend this Complaint
2 and all proceedings herein to set forth the nature of these defendants' identity.

3 15. The Receiver is informed and believes, and based thereon alleges, that
4 Does 1 through 10, are principals, officers and/or agents of each of the other
5 defendants, and directed, ratified, or caused the conduct and/or omissions alleged in
6 this Complaint. The Receiver is further informed, and on that basis alleges, that
7 Does 1 through 10 are the alter egos of the other defendants, and as such are liable
8 for the conduct and damages alleged against the other defendants herein.

9 16. The Receiver is informed and believes, and based thereon alleges, that
10 Defendants, at all times relevant herein are, the agents, principals, partners, co-
11 conspirators and/or co-venturers of Does 1 through 10, and acted within the course,
12 scope and authority of said relationship, and that, as a result, are severally liable for
13 the acts alleged herein.

14 IV. FACTUAL ALLEGATIONS

15 A. The Purported Business of the Receivership Entities and the 16 Commencement of the SEC Action

17 17. As alleged by the Commission in the SEC Action, NASI raised money
18 from investors by selling them Automated Teller Machines ("ATMs"), leasing the
19 ATMs back from investors, managing the ATMs for the investors, and paying the
20 investors "rents" that were guaranteed to total at least 20% of the purchase price
21 paid for the ATMs per year. The Receivership entities also paid referral fees to
22 investors and other agents who recruited new investors to purchase ATMs.

23 18. In actuality, the Receivership Entities did not sell any ATMs to
24 investors, but instead fabricated and sold fictitious ATMs with fabricated serial
25 numbers and locations. The "rents" paid to investors who purchased fictitious
26 ATMs, as well as referral fees paid to investors and agents, were paid from the
27 amounts raised from other investors. Thus, NASI operated a classic Ponzi scheme.
28

1 19. On or about September 17, 2014, the Commission initiated the SEC
2 Action against the Receivership Entities and their principals Joel Gillis and Edward
3 Wishner, alleging violations of federal securities laws. The Commission petitioned
4 for the Receiver's appointment, and on September 30, 2014, and October 29, 2014,
5 this Court entered orders appointing the Receiver, first on a temporary basis and
6 then as permanent receiver for the Receivership Entities.

7 **B. The Receiver's Authority and Investigation Pursuant to His**
8 **Appointment**

9 20. Pursuant to the terms of his appointment, the Receiver is vested with
10 exclusive authority and control over the assets of the Receivership Entities.
11 Specifically, Article XII of the Preliminary Injunction vests the Receiver with the
12 "full powers of an equity receiver, including, but not limited to . . . full power to
13 sue . . . and take into possession all [receivership] property." (Emphasis added.)

14 21. Since his appointment, the Receiver has continued to conduct
15 investigation into the activities of the Receivership Entities, and the results of his
16 investigation to date supports and confirms the Commissions' allegations in the SEC
17 Action, including that NASI operated a Ponzi scheme, sold fictitious ATMs to
18 investors and made rent and referral fee payments to investors from funds raised
19 from other investors.

20 22. On or around December 5, 2014, the principal individual defendants in
21 the SEC Action, Joel Gillis and Edward Wishner, filed answers to the SEC's
22 complaint in which they admit the facts supporting the SEC's Ponzi scheme
23 allegations.

24 **C. Criminal Indictment and Guilty Pleas**

25 23. On or around December 16, 2014, Gillis and Wishner were arrested and
26 charged with mail fraud, wire fraud, conspiracy, and aiding and abetting in the
27 criminal action entitled *United States v. Gillis, et al.*, C.D. Cal. Case No. 14-CR-
28 00712-SJO. Gillis and Wishner waived indictment, surrendered their passports, and

1 were released on bail. On January 13, 2015, and January 21, 2015, respectively,
2 Wishner and Gillis plead guilty to all four counts of the criminal information. In
3 connection with Gillis' guilty plea, a statement of facts signed by Gillis that supports
4 the guilty plea was filed by the government ("Statement of Facts"). As part of his
5 guilty plea, Gillis stated under oath that the facts in the Statement of Facts were true.
6 The Statement of Facts is attached hereto as Exhibit A.

7 24. The Statement of Facts is fully incorporated herein by reference. The
8 facts stated therein are included in this complaint as though fully restated and
9 alleged herein. On November 16, 2015, Gillis and Wishner were sentenced to
10 incarceration for 120 months and 108 months, respectively. On January 26, 2016,
11 an order requiring Gillis and Wishner to pay \$124,542,945.55 in restitution to the
12 victims of the Ponzi scheme was entered.

13 **D. The Voidable Transfers to Defendants From the Receivership**
14 **Entities**

15 25. Upon the Receiver's appointment, the Receiver promptly moved to
16 secure control over NASI's offices, assets, and operations, including its electronic
17 and physical records and data. Altogether, these records included 92 boxes of
18 documents and electronic images containing a total of over 56,000 documents.
19 Despite the large volume of records obtained, there was no way for the Receiver to
20 identify profiting investors without expending considerable time to reconstruct
21 financial receipts and disbursements for the Receivership Entities going back more
22 than 15 years from the date of his appointment. The Receiver's investigation into
23 the assets and financial affairs of the Receivership Entities was further complicated
24 because the Receivership Entities did not keep traditional accounting systems or
25 software, balance sheets, profit and loss statements or other financial statements,
26 bank statements or other banking records for their accounts, or a traditional database
27 of investor accounts. Accordingly, at the outset of his appointment and for lengthy
28 period of time thereafter, the Receiver had no way to know of specific payments

1 received from individual investors or payments made to individual investors as
2 purported profits, including payments received from or made to Defendants by
3 NASI.

4 26. As reliable information about NASI's financial transactions was not
5 available, the Receiver and his staff had to devote considerable time and diligently
6 reconstructed the company's ledger of transactions. This required the Receiver and
7 his staff to manually source information from years of bank statements and cleared
8 checks in order to create a schedule of checks paid by NASI to investors. On
9 average, over 2,000 checks were paid by NASI to investors on a monthly basis in
10 2014. A significant amount of time was also spent by the Receiver and his staff to
11 reconstruct banking transactions from 2005, 2006 and 2007, as financial institutions
12 no longer kept these records since they are only required to maintain account
13 records going back seven years. Reconstruction of these years of payments to
14 investors was not completed until the second quarter of 2015, and it was not until
15 the second quarter of 2016 that the Receiver was able to complete the reconstruction
16 of both payments received from and made to Defendants such that a determination
17 could be made as to whether Defendants received profits in excess of their initial
18 deposits.

19 27. Specifically, including payments to and from Defendants going back to
20 2006, it was not until June 6, 2016 that the Receiver discovered that Defendants had
21 received profits over and above their initial deposits. Once discovered, the Receiver
22 promptly made a demand on Defendants for disgorgement in a letter dated June 28,
23 2016. Defendants did not accept the Court-approved settlement offer in the letter
24 and the Receiver then promptly filed this action.

25 28. Attached hereto as Exhibit B is a schedule of bank transfers from
26 Defendants to NASI and from NASI to Defendants. As the schedule reflects, the net
27 amount received by Defendants ("Profit Amount") is calculated by subtracting
28 (a) transfers from NASI to Defendants ("Payments from NASI") from (b) transfers

1 from Defendants to NASI ("Deposit Amount"). Defendants' Profit Amount is
2 \$168,134.50.¹

3 29. Defendants had no business dealing with NASI apart from transactions
4 relating to the purchase and leasing of fictitious ATMs and provided no services or
5 other value to NASI other than amounts paid for the fictitious ATMs.

6 **COUNT I – VOIDABLE TRANSFER**

7 30. The Receiver incorporates herein each and every allegation contained
8 in Paragraphs 1 through 29, inclusive, hereinabove set forth.

9 31. Over the course of its pre-receivership operations, NASI paid the Profit
10 Amount to Defendants with the intent to hinder, delay, or defraud NASI's creditors.
11 Such payments were made from the proceeds of the Ponzi scheme which were
12 generated from investors in the scheme.

13 32. The Receivership Entities received nothing of value in exchange for the
14 payments that comprise the Profit Amount.

15 33. At the time the payments comprising the Profit Amount were made to
16 Defendants, NASI was engaged in or about to engage in business transactions for
17 which its remaining assets were unreasonably small in relation to the business or
18 transaction.

19 34. NASI was insolvent, or became insolvent, shortly after the subject
20 payments comprising the Profit Amount were made to Defendants.

21 35. NASI intended to incur, or believed or reasonably should have believed
22 it would incur, debts beyond its ability to pay as they became due.

23 36. As a consequence, the full Profit Amount is both an "actual fraud" and
24 "constructive fraud" voidable transfer under California's Uniform Voidable
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27 ¹ All transfers of Payments from NASI occurring (a) after Defendant received
28 payments equal to the Deposit Amount, and (b) more than seven years prior to
the date of filing this Complaint have been excluded from the calculation of the
Profit Amount.

1 Transactions Act, Cal. Civ. Code section 3439, *et seq.*, and is subject to immediate
2 disgorgement to the Receiver.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Receiver prays for judgment against Defendants as
5 follows:

6 (a) For a judgment against Defendants, avoiding the transfer from NASI to
7 Defendants comprising the Profit Amount; and

8 (b) For an order deeming the Profit Amount paid to Defendants to be held
9 in constructive trust for the benefit of the Receivership Entities; and

10 (c) For an order directing Defendants to immediately pay the Profit
11 Amount, plus prejudgment interest and costs, to the Receiver; and

12 (d) For such other and further relief as the Court may deem proper.

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14 Dated: June 5, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
EDWARD G. FATES
TIM C. HSU

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17 By: /s/ Tim C. Hsu

18 TIM C. HSU
19 Attorneys for Receiver
20 WILLIAM J. HOFFMAN
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